

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 116 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be  
allowed to see the judgements? No.
2. To be referred to the Reporter or not?  
No.
3. Whether Their Lordships wish to see the  
fair copy of the judgement? No.
4. Whether this case involves a substantial  
question of law as to the interpretation  
of the Constitution of India, 1950 of any  
Order made thereunder? No.
5. Whether it is to be circulated to the  
Civil Judge? No.

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KOLI JENTI BACHU @ JOHN  
Versus  
STATE OF GUJARAT & OTHERS.

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Appearance.

MR KD PARMAR, for the petitioner.  
MR DN PATEL ASSTT. GOVERNMENT PLEADER  
for therespondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/08/97

ORAL JUDGMENT.

In this petition under Article 226 of the Constitution of India the petitioner has brought under challenge the impugned order of externment dated 6th March, 1996 passed by the respondent no. 2 confirmed by

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respondent no. 1 through its Deputy Secretary, Home Department (Special) on 6-11-1996 and also consequential order dated 8-4-1996.

2. The petitioner has challenged the impugned order of externment inter alia on the ground of delay by asserting that the show cause notice for proposed externment was issued on 3-5-1995 and the order was passed on 6-3-1996. Thus, there has been unexplained delay of more than 10 months in passing the order of externment. No Affidavit in Reply has been filed by the respondents. In order to substantiate the aforesaid grounds reliance has been placed upon a decision of this Court dated 10.12.1996 in the case between Sitaben M. Thakore V/s. Commissioner of Police in Special Criminal Application No.63 of 1996 (Coram : N.N.Mathur, J.), which in turn has referred to a Division Bench decision in Special Civil Application No. 1295/94 decided on 24.1.1995 (Coram : K.J.Vaidya and S.D.Dave, JJ.). It has been submitted from the aforesaid decisions that the order of externment has been passed after long lapse of time which has snapped the live link in between the past acts committed by the concerned petitioner and the order of externment impugned by him.

4. In reply, it has been submitted that delay has occasioned not on account of the fault of the concerned Authority, but on account of either the fault of the complainant or on account of the fault of the externee inasmuch as evidence could not be recorded in time on

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account of such fault. This explanation of delay would run counter to the idea behind the concept of externment as envisaged by section 56 of the Bombay Police Act, according to which a man is to be sent out, who is engaged in the anti-social activities in a particular area so as to release the people from the said person of his illegal activities by destroying the established net-work of the evil elements in that particular locality. This Court in the aforesaid decision observed that whosoever might be responsible for passage of time,

the very purpose of the exercise of power u/s. 56 is frustrated if the same are not exercised within a 'reasonable period', because the grounds which existed for externment would require immediate action and such grounds cannot be said to have continued for a long period.

In the result, in view of what is stated above and in the facts of the case, this Special Criminal Application is required to be allowed. The impugned order of externment dated 6.3.1996 passed by the respondent no. 2, the order dated 26-11-1996 and the consequential order dated 8-4-1996 at annexure -B are hereby quashed and set aside. The petitioner - externnee Koli Jenti Bachu @ John shall be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. D.S. is permitted.

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